



#14

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: FINE et al.

Examiner: Charles E. Phillips

Serial No.: 09/762,000

Group Art Unit: 3751

Filed: 01/17/2001

Title: HOT WATER FAUCET LOCK

Attorney Docket No.: 20-073-JF

**BRIEF ON APPEAL**

Honorable Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**RECEIVED**

NOV 18 2002

TECHNOLOGY CENTER R3700

**Status of Claims**

Claims 1-20 are the subject of this appeal. No other claims are pending.

**Status of Amendments**

There were no amendments filed After Final Rejection of June 11, 2002. There were amendments to Claims 1, 4, 7, and 9-20 filed after Rejection of October 15, 2001.

**Summary of Invention**

The present invention, hot water faucet lock, is designed especially for the safety of those with physical handicaps. Particularly, the hot water faucet lock is a device to protect children and others with spasticity or other types of disabilities from accidentally being exposed to hot

11/14/2002 AWONDAF1 00000061 09762000

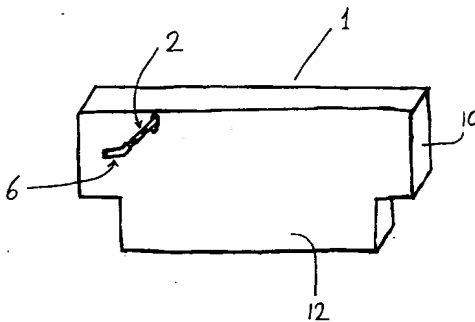
01 FC:2402

160.00 0P

water. Even if the hot tap water is incapable of causing severe burns, it can still frighten a child or cause discomfort.

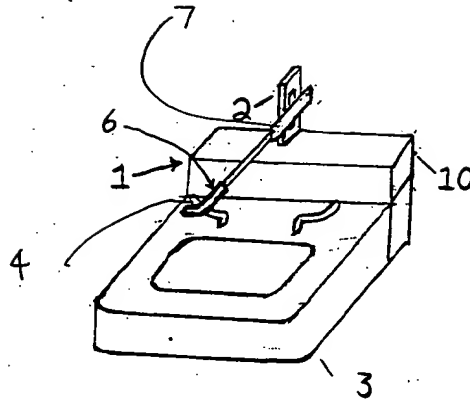
One of the embodiments of Applicants' invention is depicted below in Figure 2, which figure depicts an embodiment of the independent Claim 1. Here, the faucet lock 1 has a base 10 and a bracket 2 adjustably attached to the base 10. Below is a copy of the Figure 2 taken from the application.

Fig. 2.



The faucet lock 1 is designed for placement on or near a faucet to limit freedom of rotation of a wrist blade control handle, as shown in Figure 1 below. As could be seen in Figure 1, Applicants disclosed a locking device 1 comprising base 10, a first bracket 2 adjustably attached to base 10, and a second bracket 7 adjustably attached to first bracket 2. The locking device 1 is positioned on a sink 3, where a second bracket 7 limits degree of rotation of the hot water valve wrist blade control handle 4. This embodiment of the invention is outlined in the independent Claim 11. Below is a copy of the Figure 1 taken from the application.

Fig. 1



The Applicants' locking device 1 prohibits the movement of wrist blade control handles 4 to prevent their inadvertent use. Many institutions have lavatory sinks with wrist blade or blade-type control handles that operate the faucet's water valves.

The present invention can also be used to limit a faucet's available water flow. The brackets 2 and 7 of the locking device 1 can be adjusted to allow the control handle 4 to be partially rotated. Therefore, some water may be permitted to flow while restricting the full range of motion of the control handle.

Accordingly, the primary purpose of the present invention is to provide a relatively simple and inexpensive locking mechanism for a faucet that has wrist blade control handles to control water flow.

## Issues

Issue 1 – Whether claims 1, 5, 6 and 9 are anticipated under 35 USC 102(b) by *Nachbauer et al.*?

Issue 2 – Whether claims 1, 2, 4 and 9 are anticipated under 35 USC 102(b) by *Jones et al.*?

Issue 3 – Whether claims 3, 7, 8 and 10-20 are patentable under 35 USC 103(a) over *Nachbauer et al.* and *Jones et al.*?

## **Grouping of Claims**

For each ground of rejection which appellant contests herein which applies to more than one claim, such additional claims, to the extent separately identified and argued below, do not succeed or fail together.

## **The Argument**

### *Issue 1 – Whether Claims 1, 5, 6 and 9 Are Patentable Under 35 USC 102(b) Over Nachbauer et al.*

The amended independent Claim 1 claims the faucet lock 1 where the faucet lock 1 is comprised of a base 10 and a bracket 2 adjustably attached to the base 10, as shown in Figure 2 above. Claims 5, 6 and 9 are dependent on Claim 1.

*Nachbauer et al.* (U.S. Pat. No. 5,927,111) teaches an outdoor faucet lock that, when locked, is fully secured from any operation. Specifically, *Nachbauer* teaches housing halves 11 and 12 locked around an outdoor faucet and supported by an optional wall mounting means 14, as shown below in Figure 1 taken from *Nachbauer*.

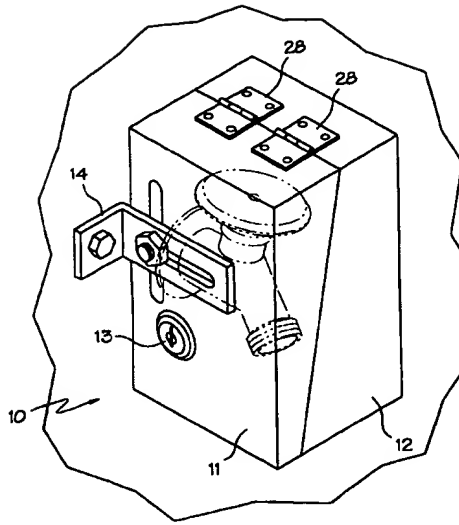


FIG. 1

The Examiner has failed to establish a *prima facie* case that the present invention is anticipated by *Nachbauer*.

To be an anticipating reference, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardsen v. Suzuki Motor Co.*, F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Furthermore, as stated by the Federal Circuit, “[a]nticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)).

In the Final Office Action, the Examiner stated that *Nachbauer* teaches the base at 14 and bracket at 11. However, the Applicants’ elements of base 10 and bracket 2 are completely different in both design and function from *Nachbauer*’s elements of “wall mounting means” 14 and “housing halves” 11 and 12. While Applicants’ base 10 is a body designed to be placed in

the rear of a sink to provide support to the arm-like bracket 2, *Nachbauer*'s element of wall mounting means 14 is simply a means for securing of housing halves 11 and 12 to a wall. Furthermore, Applicants' bracket 2 is a single element designed to limit the degree of opening of a wrist blade control handle of the indoor sink, while the alleged equivalent element in *Nachbauer* is actually composed of two separate elements of "housing halves" 11 and 12 which serve to create a box around an outdoor faucet to prevent any access whatsoever to the faucet. Thus, the Applicants' elements and *Nachbauer* elements simply do not match in design, construction or functionality.

The Federal Circuit requires that in order to identify corresponding elements in the allegedly anticipating reference, the trier of fact must first determine the meaning of the elements of the claims "in light of the specification and prosecution history." *Ibid.* In such light, one ordinarily skilled in the art would readily recognize that the claimed invention and the reference disclosure teach significantly different devices, and that a "base" and "bracket" cannot be contrived from the latter to establish such a correspondence with the former. *See Scripps Clinic & Research Found. v. Genetech Inc.*, 927 F.2d 1565, 18 USPQ 2d 1001, 1010 (Fed. Cir. 1991).

Further highlighting the distinctions between the instant invention and prior art, the elements of *Nachbauer*'s allegedly anticipating claims teach an unmistakably different device, one which is intentionally designed for restricting access to outdoor faucets, which optionally includes the "wall mounting means" 14, which only serves as a mounting mechanism and not the mechanism for regulating the control valve, and which either completely exposes or completely houses the faucet and the valve control. Quite the opposite, the Applicants' invention applies primarily to indoor faucets, and it possesses an adjustable bracket that does not house the control handle or the faucet, but rather restricts the movement of a wrist blade type handle. Locking and

unlocking the device in *Nachbauer* involves rotating the second housing half 12 down and up, respectively, irrespective of contact with the faucet handle. The present device can be “locked” at varying degrees by adjusting the bracket. The device disclosed in *Nachbauer*, which is designed to house a faucet with an attached control valve, is not designed to be implemented with a wrist blade type handle.

Contrary to the present invention, *Nachbauer* is an outdoor faucet lock box that, when locked, is fully secured from any operation. As such, the invention of *Nachbauer* fails to obstruct or inhibit the rotation of the of the faucet handle in any manner. In fact, unlike the invention of *Nachbauer*, which never comes in physical contact with the faucet handle, the present invention utilizes contact with the faucet handle to restrict movement of the handle. Thus the instant invention is designed to restrict movement of a wrist blade handle whereas the *Nachbauer* invention is designed to restrict access to the faucet. and is designed for a specific configuration, the wrist blade handle

The present invention is designed for operation with a specific configuration of faucet, the wrist blade handle type faucet. The present invention regulates the degree of freedom of rotation of a wrist blade handle, typical of indoor, institutional lavatory sinks, and is not limited to preventing total use of the faucet. Naturally, one can adjust the bracket to fully lock the wrist blade handle and thereby prevent any use of the faucet. However, the Applicants stress the instant invention’s unique ability to regulate the degree of freedom of rotation of the wrist blade handle because this feature has applications useful to children and disabled individuals. For example, the invention allows a disabled individual to partially open the hot water valve without being in danger of opening it too much, thus preventing the individual’s exposure to an excessive amount of hot water that could alarm and potentially burn the individual. This throttling

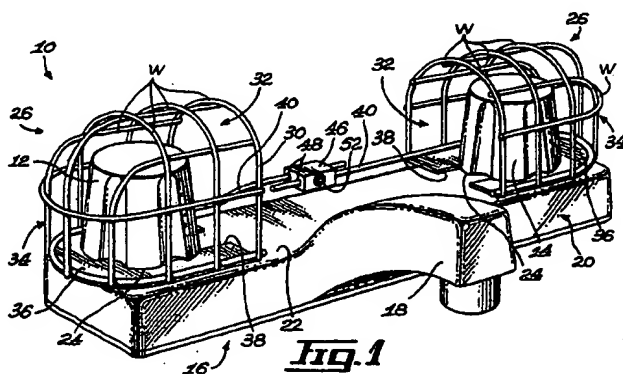
capability stands as another major design difference which illustrates the novelty of the instant invention over *Nachbauer*.

Since the invention of *Nachbauer* restricts only access to a faucet handle and wholly fails to restrict movement of the faucet handle, fails to come in contact with the faucet handle, lacks the parts coaction of the instant invention, and lacks any throttling capabilities as described above, for the foregoing reasons, *Nachbauer* does not anticipate Claim 1. Furthermore, Claims 5, 6, 9, and 10 are also not anticipated by *Nachbauer* since they are dependent on Claim 1 and, therefore, incorporate the limitations of Claim 1.

Issue 2 – Whether Claims 1, 2, 4 and 9 Are Patentable Under 35 USC 102(b) Over Jones et al.?

As discussed above, Applicants' amended Claim 1 recites a faucet lock that allows the user to limit the degree of freedom of rotation of a faucet's wrist blade control handle.

*Jones et al.* (U.S. Pat. No. 5,588,316), on the other hand, teaches a cage-like locking device 10 that prevents the use of round or knob handles on faucets, as shown in *Jones*' Figure 1 reproduced below.





Here again, the Examiner has failed to establish a *prima facie* case that the present invention is anticipated by *Jones*.

The Examiner's citing to *Jones* as having a base 38 and a bracket 30 is un-supported in light of the *Jones* specification which defines these objects as an "elongated fixing slot 38" and a "peripheral edge 30." See *Jones*, Column 3, lines 10-12, 33-36. The Examiner inaccurately interjects Applicants' terminology to, presumably, explain the similarity of the *Jones* patent. This explanation, however, fails to specifically indicate how the *Jones* device is anticipating. Regardless of the Examiner's insufficient reasoning, the existence of similar elements in isolation does not teach a similar function or utility and does not render *Jones* a single anticipating reference. As mentioned above in Issue 1, even if the prior art includes all of the elements that the Applicants claims, if the claimed elements are arranged differently than the prior art elements, there can be no anticipation. See *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)).

Illustrating the significant distinction between the arrangement of the elements of the cited prior art and the present invention, it is important to note that in order for the device disclosed in *Jones* to lock the faucet, both control handles must be enclosed by the "handle enclosing components." The *Jones*' "locking block" 46 requires that the two handle enclosing components work in tandem. See *Jones*, Column 3, lines 61-65, and Column 4, lines 40-44. However, Applicants' device is fully capable of restricting just one control handle.

Further, applying the *Jones* invention to a wrist blade control handle illustrates that the *Jones* invention fails to restrict operation of and access to the wrist blade control handle since a

finger or a projectile object could fit through the bracket and operate the handle. Thus the flaws of the *Jones* invention only serve to exemplify the very necessity of the instant invention.

For the foregoing reasons, *Jones* is not an anticipating reference, it does not teach Applicants' invention, nor would anyone skilled in the art interpret *Jones* to anticipate the present invention.

Accordingly, *Jones* does not anticipate Claim 1. Furthermore, Claims 2, 4, and 9 are also not anticipated by *Jones* since they are dependent on Claim 1 and, therefore, incorporate the limitations of Claim 1.

*Issue 3 – Whether Claims 3, 7, 8 And 10-20 Are Patentable Under 35 USC 103(a) Over Nachbauer et al. And Jones et al.?*

The Examiner asserted that Claims 3, 7, 8, and 10-20 are obvious and, thus, unpatentable over *Nachbauer* and *Jones*.

The Applicants respectfully submit that the *prima facie* case of obviousness has not been made in this case.

The Examiner bears the initial burden of proof to produce the “factual basis for its rejection of an application under [section] 103.” *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 177 (C.C.P.A. 1967). When the incentive to combine the teachings of the references is not readily apparent, it is the duty of the examiner to explain why combination of the reference teachings is proper... [a]bsent such reasons or incentives, the teachings of the references are not combinable. *Ex Parte Skinner*, 2 USPQ2d 1788, 1790 (B.P.A.I. 1987). Here, the Examiner offered no grounds for his section 103(a) rejection in the Final Office Action. Accordingly, the Applicants are under no obligation to submit evidence of non-obviousness. MPEP 2142.

Notwithstanding the Examiner's failure to present sufficient evidence as to why the Applicants' invention is obvious over *Nachbauer* and *Jones*, Applicants assert that the *prima facie* case of obviousness cannot be made in this case.

In order to establish a *prima facie* case of obviousness, one must show a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings. MPEP 2143. It is an established legal doctrine that the teaching or suggestion to make the claimed combination and the reasonable expectation of its success must be found in the prior art, not in Applicants' disclosure. *In re Vaek*, 947 F.2d 488, 20 USPQ 1438 (Fed. Cir. 1991). Neither the devices disclosed in *Jones* and *Nachbauer*, nor the knowledge generally available to one of ordinary skill in the art, suggest or motivate a modification in the references to make a locking device comprising a bracket that successfully controls the degree of use of a wrist blade handle of a faucet.

To the contrary, the devices disclosed in *Jones* and *Nachbauer* teach away from Applicants' device. References teach away if their line of development is unproductive of the result sought by an applicant. *See W.L. Gore & Assocs. V. Garlock, Inc.*, 721 F.2d 1540, 1550-51, 220 USPQ 303, 311 (Fed. Cir. 1983); *In re Caldwell*, 319 F.2d 254, 256, 138 USPQ 243, 245 (C.C.P.A. 1963). Both prior art devices include enclosing structures that cover or partially cover a valve-control handle, which, in *Nachbauer*, is one that is typical of outdoor faucets, and, in *Jones*, is a knob-type handle. The Applicants, on the other hand, teach a bracket positioned next to a wrist blade handle that allows a user to not only access but also pivot the wrist blade handle for limited faucet use. One of ordinary skill in the art would not likely envision incorporating the housing structures disclosed in the prior art with wrist blade handles that typically vary in length

(depending on the manufacturer) and, thus, degree of rotation. Such a modification would defeat the present invention's ability to regulate the movements of a control handle.

Moreover, Applicants' independent Claims 1 and 11 are neither motivated or suggested by *Nachbauer* or *Jones*, which do not motivate or suggest the assembly of a locking device that controls the degree of use of wrist blade handles on a faucet. To the contrary, these references suggest a device that fully prevents access to knob-type or outdoor valve control handles. Thus, not only would one skilled in the art deem the instant invention non-obvious in light of one of the Examiner's cited references, but also one would not be motivated to combine both references to produce the device claimed by the Applicants.

It is impermissible to use the claimed invention as an instructional manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fritch*, 972 F. 2d 1260, 23 USPQ 2d 1780, 1784 (Fed. Cir. 1992)(quoting *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ 2d 1596, 1600 (Fed. Cir. 1988)). Clearly, since the part coaction and function differs drastically between the terms used in the *Nachbauer* and the instant invention, the examiners use of the terms from the instant invention in *Nachbauer* is wholly unreconcilable.

Therefore, in light of the entire record and the Examiner's failure to support his contention of obviousness, the prior art references of *Nachbauer* and *Jones* do not motivate or suggest making the disclosed invention, nor do they motivate or suggest all of the limitations of the disclosed invention.

## Conclusion

For the extensive reasons advanced above, Applicants respectfully contend that each Claim is patentable. Therefore, reversal of all rejections is courteously solicited.

To the extent necessary, a petition for an extension of time under 37 CFR 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 12-0115 and please credit any excess fees to such deposit account.

Respectfully Submitted,

11/12/2002  
Date

Edward Timmer  
Edward Timmer  
Attorney/Agent for Applicant(s)  
Reg. No. 46,248

Edward Timmer  
Lambert & Associates  
92 State Street  
Boston, MA 02109-2004  
Tel. (617) 720-5822

## **Appendix**

### **Applicants' Pending Claims**

1. (Once Amended) A faucet lock for use with a lavatory sink faucet having at least one water valve wrist blade control handle, said faucet lock comprising:
  - a base,
  - a bracket, having first and second ends thereof, wherein said first end is adjustably attached to said base such that said second end is positionable adjacent to said wrist blade control handle thereby regulating degree of freedom of rotation of said wrist blade control handle.
2. The faucet lock as claimed in claim 1 wherein said base is disposed on a rear portion of said sink.
3. The faucet lock as claimed in claim 1 wherein said base is positioned rearward of said sink.
4. (Once Amended) The faucet lock as claimed in claim 1 wherein said base further comprises a plurality of said brackets for regulating degree of freedom of rotation of a plurality of said wrist blade control handles.
5. The faucet lock as claimed in claim 1 wherein said bracket attaches to said base at variable heights.

6. The faucet lock as claimed in claim 1 wherein said bracket attaches to said base at variable lengths.

7. (Once Amended) The faucet lock as claimed in claim 1 wherein said bracket adjusts to limit rotation of said wrist blade control handle for providing variable limited use of said wrist blade control handle.

8. The faucet lock as claimed in claim 1 wherein said faucet lock further comprises a second lock securing said second end of said bracket in said position adjacent said control handle.

9. (Once Amended) The faucet lock as claimed in claim 1 wherein said wrist blade control handle is a hot water wrist blade control handle.

10. (Once Amended) The faucet lock as claimed in claim 1 wherein said bracket comprises a flexible and positionable material wherein said faucet is locked when said bracket is positioned around said wrist blade control handle preventing said wrist blade control handle from opening said water valve.

11. (Once Amended) A faucet lock for use with a lavatory sink having at least one water valve wrist blade control handle, said faucet lock comprising:

a base,

a first bracket attached to said base,

a second bracket having first and second ends thereof, wherein said first end adjustably

attaches to said first bracket such that said second end is positionable adjacent to said wrist blade control handle thereby regulating degree of freedom of rotation of said wrist blade control handle.

12. (Once Amended) The faucet lock as claimed in claim 11 wherein said base is disposed on a rear portion of said sink.

13. (Once Amended) The faucet lock as claimed in claim 11 wherein said base is positioned rearward of said sink.

14. (Once Amended) The faucet lock as claimed in claim 11 wherein said base further comprises a plurality of said brackets for regulating degree of freedom of rotation of a plurality of said wrist blade control handles.

15. (Once Amended) The faucet lock as claimed in claim 11 wherein said bracket attaches to said base at variable heights.

16. (Once Amended) The faucet lock as claimed in claim 11 wherein said bracket attaches to said base at variable lengths.

17. (Once Amended) The faucet lock as claimed in claim 11 wherein said bracket adjusts to limit rotation of said wrist blade control handle for providing variable limited use of said wrist blade control handle.



18. (Once Amended) The faucet lock as claimed in claim 11 wherein said faucet lock further comprises a second lock securing said second end of said bracket in said position adjacent said control handle.

19. (Once Amended) The faucet lock as claimed in claim 11 wherein said wrist blade control handle is a hot water wrist blade control handle.

20. (Once Amended) The faucet lock as claimed in claim 11 wherein said bracket comprises a flexible and positionable material wherein said faucet is locked when said bracket is positioned around said wrist blade control handle preventing said wrist blade control handle from opening said water valve.